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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/570,152	03/01/2006	Kouji Hoshi	062120	8048
38834 7590 09/17/2007 WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP 1250 CONNECTICUT AVENUE, NW SUITE 700 WASHINGTON, DC 20036			EXAMINER CHARIOUI, MOHAMED	
			ART UNIT 2857	PAPER NUMBER
			MAIL DATE 09/17/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/570,152

Applicant(s)

HOSHI ET AL.

Examiner

Mohamed Charioui

Art Unit

2857

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☒ Claim(s) 6 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2006 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/7/06; 3/1/06.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

In page 7, line 21, change "Figs. 6(a) to 6(b)" to --Figs. 6(a) to 6(c)--

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-5 are rejected under 35 U.S.C. 102(e) as being anticipated by Minami (U.S. Patent Number 6,985,804).

As per claim 1, Minami teaches an indicating means which measures a fuel consumption ratio and provides an indication for communicating a difference between the measured fuel consumption ratio and a set fuel consumption ratio (see col. 1, lines 28-55, col. 3, line 64 to col. 4, line 25; and col. 6, lines 4-54).

As per claim 2, Minami further teaches that when the measured fuel consumption ratio is larger than the set fuel consumption ratio, the indicating means provides an indication for prompting an improvement of fuel consumption (see col. 8, lines 21-40 and col. 1, lines 32-55).

As per claim 3, Minami further teaches that the indication for prompting the improvement of fuel consumption includes a display displayed on a monitor screen, which is provided in an operator cab of the construction machine (see col. 11, lines 6-15).

As per claim 4, Minami further teaches that the indication for prompting the improvement of fuel consumption includes a voice presentation by a voice generator which is provided in an operator cab of the construction machine (see col. 11, lines 6-15).

As per claim 5, Minami further teaches measurement means which measures a fuel consumption ratio (see col. 3, lines 4-14); storage means which stores a plurality of reference fuel consumption ratios which are set in advance, corresponding to different work loads (see col. 3, lines 4-14 and col. 3, line 64 to col. 4, line 25); selection means which selects the reference fuel consumption ratio which corresponds to the work load from the storage means (see col. 4, lines 15-25); comparison means which compares the fuel consumption ratio measured by the measurement means and the reference fuel consumption ratio selected by the selection means (see col. 8, lines 21-40); and output means which outputs the result of comparison by the comparison means (see col. 9, lines 40-49).

Allowable Subject Matter

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3. **Claim 6** is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The closest prior art, Minami (U.S. Patent Number 6,985,804) fails to anticipate or render obvious a construction machine having a control means which has a plurality of selective work modes having respectively different reference load values, and controls an operation of the construction machine so that the workload thereof matches the reference load value corresponding to the selected work mode, in combination with the rest of the claim limitations.

Prior art

4. The prior art made record and not relied upon is considered pertinent to applicant's disclosure:

Minami et al. ['423] disclose evaluation system for vehicle operating conditions and evaluation method thereof.

Contact information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohamed Charioui whose telephone number is (571) 272-2213. The examiner can normally be reached Monday through Friday, from 9 am to 6 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eliseo Ramos-Feliciano can be reached on (571) 272-7925. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Mohamed Charioui

9/11/07

/Edward Raymond/
Primary Examiner
Art Unit 2857

EDWARD RAYMOND
PRIMARY EXAMINER